

APPEAL NO. 030045
FILED MARCH 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 13, 2002. The hearing officer determined that the appellant (carrier) may not suspend respondent's (claimant) income benefits to recoup its overpayment. The carrier appeals and the claimant responds, urging affirmance.

DECISION

Affirmed.

The circumstances of this case are largely undisputed. The carrier contends that it should be allowed to seek recoupment against the claimant's future impairment income benefits (IIBs). The overpayments of temporary income benefits, for the period from March 30 through July 11, 2001, were made to the claimant pursuant to a decision and order from a previous CCH held on January 15, 2002, to determine the claimant's period of disability. The Appeals Panel reversed that decision and order; see Texas Workers' Compensation Commission Appeal No. 020394, decided April 10, 2002. The carrier then brought this action to recoup from the claimant's future IIBs the payments made as a result of that previous decision and order.

We note that the overpayment in this instance resulted from a decision and order or an interlocutory order that was reversed by the Appeals Panel. Section 410.209 provides, in relevant part:

The subsequent injury fund [SIF] shall reimburse an insurance carrier for any overpayments of benefits made under an interlocutory order or decision if that order or decision is reversed or modified by final arbitration, order, or decision of the [Texas Workers' Compensation Commission] [C]ommission or a court.... [Emphasis added.]

Although Section 410.209 indicates that the SIF shall reimburse a carrier for overpayments that result because an order or decision is reversed, that section does not answer the question of whether the carrier may seek recoupment from the claimant instead. In addition, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 116.11(a)(1) (Rule 116.11(a)(1)) states:

- (a) A carrier may request:
 - (1) reimbursement from the [SIF] for an overpayment of income, death, or medical benefits when the carrier has made an unrecoupable overpayment pursuant to decision of a hearing officer or the appeals panel or an interlocutory order, and

that decision or order, is reversed or modified by final arbitration, order, or decision of the [C]ommission, the State Office of Administrative Hearings, or a court of last resort....

Rule 126.1(4) defines an “unrecoupable overpayment” as: “The amount of benefits paid by the carrier to the claimant which were not owed and which were not recoverable or convertible from other income benefits.” Rule 126.7(j) provides, in pertinent part: “An unrecoupable overpayment for the purpose of reimbursement from the [SIF] includes only those benefits that were overpaid by the carrier pursuant to an interlocutory order which were not owed to the employee and which were not recoverable from or convertible to IIBs.”

The hearing officer determined, among other things, that there is no provision in the 1989 Act or in the Commission's Rules which provides for the carrier's right to offset or recoup the overpayment of benefits made pursuant to a hearing officer's decision. The hearing officer erred. Although Section 410.209 and Rule 116.11 contemplate recoupment from the SIF in instances (such as the one before us) where a prior interlocutory order or decision has been reversed, Rule 126.7(j) permits recoupment from a claimant's future unpaid IIBs. As a practical matter, the hearing officer's error in this case is harmless inasmuch as there was only one week of IIBs to be paid to the claimant at the time of the CCH and by the time this decision was issued and distributed to the parties, the claimant was not due any IIBs, because all of his IIBs had been paid out. Since the claimant has already received his full entitlement to IIBs, the carrier has no source from which it can recoup the overpayment. Under Rule 116.11(a)(1) the overpayment is unrecoupable from the claimant and the carrier's remedy is to seek recoupment from the SIF pursuant to Section 410.209.

